

AMENDED IN SENATE JANUARY 15, 2010

AMENDED IN SENATE APRIL 16, 2009

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 203

Introduced by Senator Harman

(Coauthors: Senators Dutton, Huff, Runner, and Walters)

(Coauthors: Assembly Members Bill Berryhill, Conway, DeVore,
Fletcher, Harkey, Jeffries, Niello, and Smyth)

February 23, 2009

An act to amend ~~Sections 311, 311.1, 311.2, 311.3, 311.4, 311.5, 311.7, 311.10, and 311.11~~ *Section 311* of the Penal Code, relating to child pornography.

LEGISLATIVE COUNSEL'S DIGEST

SB 203, as amended, Harman. Child pornography: ~~separate offense per child~~. Internet distribution.

Existing law includes provisions criminalizing conduct involving obscene matter and child pornography, *including making the distribution of this material criminal*. In *People v. Hertzig* (2007) 156 Cal.App.4th 398, the court, in interpreting one of these, a child pornography possession provision, held that the possession of multiple video images on a laptop computer was a single violation. In *People v. Manfredi* (2008) 169 Cal.App.4th 622, the court, in interpreting the same provision, held that the defendant's simultaneous possession of multiple child pornography materials at the same location was a single violation. Existing law defines the term "distribute" for these purposes of crimes relating to obscene matter.

~~This bill would revise the provisions criminalizing conduct involving obscene matter and child pornography to provide that the depiction or involvement of each individual person pursuant to any of those provisions shall constitute a distinct and separate offense. The bill would state that it is the intent of the Legislature in enacting the bill to abrogate the holdings in the cases of People v. Hertzog and People v. Manfredi, cited above.~~

~~Existing law defines the term “distribute” for purposes of crimes relating to obscene matter.~~

~~This bill would include within the definition of “distribute” making available for access or possession over the Internet.~~

~~By revising the definition of existing crimes to expand their application, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.~~

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 311 of the Penal Code is amended to
- 2 read:
- 3 311. As used in this chapter, the following definitions apply:
- 4 (a) “Obscene matter” means matter, taken as a whole, that to
- 5 the average person, applying contemporary statewide standards,
- 6 appeals to the prurient interest, that, taken as a whole, depicts or
- 7 describes sexual conduct in a patently offensive way, and that,
- 8 taken as a whole, lacks serious literary, artistic, political, or
- 9 scientific value.
- 10 (1) If it appears from the nature of the matter or the
- 11 circumstances of its dissemination, distribution, or exhibition that
- 12 it is designed for clearly defined deviant sexual groups, the appeal
- 13 of the matter shall be judged with reference to its intended recipient
- 14 group.
- 15 (2) In prosecutions under this chapter, if circumstances of
- 16 production, presentation, sale, dissemination, distribution, or
- 17 publicity indicate that matter is being commercially exploited by

1 the defendant for the sake of its prurient appeal, this evidence is
2 probative with respect to the nature of the matter and may justify
3 the conclusion that the matter lacks serious literary, artistic,
4 political, or scientific value.

5 (3) In determining whether the matter taken as a whole lacks
6 serious literary, artistic, political, or scientific value in description
7 or representation of those matters, the fact that the defendant knew
8 that the matter depicts persons under the age of 16 years engaged
9 in sexual conduct, as defined in subdivision (c) of Section 311.4,
10 is a factor that may be considered in making that determination.

11 (b) “Matter” means any book, magazine, newspaper, or other
12 printed or written material, or any picture, drawing, photograph,
13 motion picture, or other pictorial representation, or any statue or
14 other figure, or any recording, transcription, or mechanical,
15 chemical, or electrical reproduction, or any other article, equipment,
16 machine, or material. “Matter” also means live or recorded
17 telephone messages if transmitted, disseminated, or distributed as
18 part of a commercial transaction.

19 (c) “Person” means any individual, partnership, firm,
20 association, corporation, limited liability company, or other legal
21 entity.

22 (d) “Distribute” means transfer possession of, whether with or
23 without consideration, including making available for access or
24 possession over the Internet.

25 (e) “Knowingly” means being aware of the character of the
26 matter or live conduct.

27 (f) “Exhibit” means show.

28 (g) “Obscene live conduct” means any physical human body
29 activity, whether performed or engaged in alone or with other
30 persons, including but not limited to singing, speaking, dancing,
31 acting, simulating, or pantomiming, taken as a whole, that to the
32 average person, applying contemporary statewide standards,
33 appeals to the prurient interest and is conduct that, taken as a whole,
34 depicts or describes sexual conduct in a patently offensive way
35 and that, taken as a whole, lacks serious literary, artistic, political,
36 or scientific value.

37 (1) If it appears from the nature of the conduct or the
38 circumstances of its production, presentation, or exhibition that it
39 is designed for clearly defined deviant sexual groups, the appeal

1 of the conduct shall be judged with reference to its intended
2 recipient group.

3 (2) In prosecutions under this chapter, if circumstances of
4 production, presentation, advertising, or exhibition indicate that
5 live conduct is being commercially exploited by the defendant for
6 the sake of its prurient appeal, that evidence is probative with
7 respect to the nature of the conduct and may justify the conclusion
8 that the conduct lacks serious literary, artistic, political, or scientific
9 value.

10 (3) In determining whether the live conduct taken as a whole
11 lacks serious literary, artistic, political, or scientific value in
12 description or representation of those matters, the fact that the
13 defendant knew that the live conduct depicts persons under the
14 age of 16 years engaged in sexual conduct, as defined in
15 subdivision (c) of Section 311.4, is a factor that may be considered
16 in making that determination.

17 (h) The Legislature expresses its approval of the holding of
18 *People v. Cantrell*, 7 Cal.App.4th 523, that, for the purposes of
19 this chapter, matter that “depicts a person under the age of 18 years
20 personally engaging in or personally simulating sexual conduct”
21 is limited to visual works that depict that conduct.

22 SEC. 2. Section 311.1 of the Penal Code is amended to read:

23 311.1. (a) Every person who knowingly sends or causes to be
24 sent, or brings or causes to be brought, into this state for sale or
25 distribution, or in this state possesses, prepares, publishes,
26 produces, develops, duplicates, or prints any representation of
27 information, data, or image, including, but not limited to, any film,
28 filmstrip, photograph, negative, slide, photocopy, videotape, video
29 laser disc, computer hardware, computer software, computer floppy
30 disc, data storage media, CD-ROM, or computer-generated
31 equipment or any other computer-generated image that contains
32 or incorporates in any manner, any film or filmstrip, with intent
33 to distribute or to exhibit to, or to exchange with, others, or who
34 offers to distribute, distributes, or exhibits to, or exchanges with,
35 others, any obscene matter, knowing that the matter depicts a
36 person under the age of 18 years personally engaging in or
37 personally simulating sexual conduct, as defined in Section 311.4,
38 shall be punished either by imprisonment in the county jail for up
39 to one year, by a fine not to exceed one thousand dollars (\$1,000),
40 or by both the fine and imprisonment, or by imprisonment in the

1 state prison, by a fine not to exceed ten thousand dollars (\$10,000);
2 or by the fine and imprisonment.

3 ~~(b) This section does not apply to the activities of law~~
4 ~~enforcement and prosecuting agencies in the investigation and~~
5 ~~prosecution of criminal offenses or to legitimate medical, scientific,~~
6 ~~or educational activities, or to lawful conduct between spouses.~~

7 ~~(c) This section does not apply to matter which depicts a child~~
8 ~~under the age of 18 years, which child is legally emancipated,~~
9 ~~including lawful conduct between spouses when one or both are~~
10 ~~under the age of 18 years.~~

11 ~~(d) It does not constitute a violation of this section for a~~
12 ~~telephone corporation, as defined by Section 234 of the Public~~
13 ~~Utilities Code, to carry or transmit messages described in this~~
14 ~~chapter or perform related activities in providing telephone~~
15 ~~services.~~

16 ~~(e) The depiction of each individual person as described in this~~
17 ~~section shall constitute a distinct and separate offense.~~

18 SEC. 3. Section 311.2 of the Penal Code is amended to read:

19 311.2. (a) Every person who knowingly sends or causes to be
20 sent, or brings or causes to be brought, into this state for sale or
21 distribution, or in this state possesses, prepares, publishes,
22 produces, or prints, with intent to distribute or to exhibit to others,
23 or who offers to distribute, distributes, or exhibits to others, any
24 obscene matter is for a first offense, guilty of a misdemeanor. If
25 the person has previously been convicted of any violation of this
26 section, the court may, in addition to the punishment authorized
27 in Section 311.9, impose a fine not exceeding fifty thousand dollars
28 (\$50,000).

29 (b) Every person who knowingly sends or causes to be sent, or
30 brings or causes to be brought, into this state for sale or distribution,
31 or in this state possesses, prepares, publishes, produces, develops,
32 duplicates, or prints any representation of information, data, or
33 image, including, but not limited to, any film, filmstrip, photograph,
34 negative, slide, photocopy, videotape, video laser disc, computer
35 hardware, computer software, computer floppy disc, data storage
36 media, CD-ROM, or computer-generated equipment or any other
37 computer-generated image that contains or incorporates in any
38 manner, any film or filmstrip, with intent to distribute or to exhibit
39 to, or to exchange with, others for commercial consideration, or
40 who offers to distribute, distributes, or exhibits to, or exchanges

1 with, others for commercial consideration, any obscene matter,
2 knowing that the matter depicts a person under the age of 18 years
3 personally engaging in or personally simulating sexual conduct,
4 as defined in Section 311.4, is guilty of a felony and shall be
5 punished by imprisonment in the state prison for two, three, or six
6 years, or by a fine not exceeding one hundred thousand dollars
7 (\$100,000), in the absence of a finding that the defendant would
8 be incapable of paying that fine, or by both that fine and
9 imprisonment.

10 (e) Every person who knowingly sends or causes to be sent, or
11 brings or causes to be brought, into this state for sale or distribution,
12 or in this state possesses, prepares, publishes, produces, develops,
13 duplicates, or prints any representation of information, data, or
14 image, including, but not limited to, any film, filmstrip, photograph,
15 negative, slide, photocopy, videotape, video laser disc, computer
16 hardware, computer software, computer floppy disc, data storage
17 media, CD-ROM, or computer-generated equipment or any other
18 computer-generated image that contains or incorporates in any
19 manner, any film or filmstrip, with intent to distribute or exhibit
20 to, or to exchange with, a person 18 years of age or older, or who
21 offers to distribute, distributes, or exhibits to, or exchanges with,
22 a person 18 years of age or older any matter, knowing that the
23 matter depicts a person under the age of 18 years personally
24 engaging in or personally simulating sexual conduct, as defined
25 in Section 311.4, shall be punished by imprisonment in the county
26 jail for up to one year, or by a fine not exceeding two thousand
27 dollars (\$2,000), or by both that fine and imprisonment, or by
28 imprisonment in the state prison. It is not necessary to prove
29 commercial consideration or that the matter is obscene in order to
30 establish a violation of this subdivision. If a person has been
31 previously convicted of a violation of this subdivision, he or she
32 is guilty of a felony.

33 (d) Every person who knowingly sends or causes to be sent, or
34 brings or causes to be brought, into this state for sale or distribution,
35 or in this state possesses, prepares, publishes, produces, develops,
36 duplicates, or prints any representation of information, data, or
37 image, including, but not limited to, any film, filmstrip, photograph,
38 negative, slide, photocopy, videotape, video laser disc, computer
39 hardware, computer software, computer floppy disc, data storage
40 media, CD-ROM, or computer-generated equipment or any other

1 computer-generated image that contains or incorporates in any
2 manner, any film or filmstrip, with intent to distribute or exhibit
3 to, or to exchange with, a person under 18 years of age, or who
4 offers to distribute, distributes, or exhibits to, or exchanges with,
5 a person under 18 years of age any matter, knowing that the matter
6 depicts a person under the age of 18 years personally engaging in
7 or personally simulating sexual conduct, as defined in Section
8 311.4, is guilty of a felony. It is not necessary to prove commercial
9 consideration or that the matter is obscene in order to establish a
10 violation of this subdivision.

11 (e) Subdivisions (a) to (d), inclusive, do not apply to the
12 activities of law enforcement and prosecuting agencies in the
13 investigation and prosecution of criminal offenses, to legitimate
14 medical, scientific, or educational activities, or to lawful conduct
15 between spouses.

16 (f) This section does not apply to matter that depicts a legally
17 emancipated child under the age of 18 years or to lawful conduct
18 between spouses when one or both are under the age of 18 years.

19 (g) It does not constitute a violation of this section for a
20 telephone corporation, as defined by Section 234 of the Public
21 Utilities Code, to carry or transmit messages described in this
22 chapter or to perform related activities in providing telephone
23 services.

24 (h) The depiction of each individual person as described in this
25 section shall constitute a distinct and separate offense.

26 SEC. 4. Section 311.3 of the Penal Code is amended to read:

27 311.3. (a) A person is guilty of sexual exploitation of a child
28 if he or she knowingly develops, duplicates, prints, or exchanges
29 any representation of information, data, or image, including, but
30 not limited to, any film, filmstrip, photograph, negative, slide,
31 photocopy, videotape, video laser disc, computer hardware,
32 computer software, computer floppy disc, data storage media,
33 CD-ROM, or computer-generated equipment or any other
34 computer-generated image that contains or incorporates in any
35 manner, any film or filmstrip that depicts a person under the age
36 of 18 years engaged in an act of sexual conduct.

37 (b) As used in this section, "sexual conduct" means any of the
38 following:

1 ~~(1) Sexual intercourse, including genital-genital, oral-genital,~~
2 ~~anal-genital, or oral-anal, whether between persons of the same or~~
3 ~~opposite sex or between humans and animals.~~

4 ~~(2) Penetration of the vagina or rectum by any object.~~

5 ~~(3) Masturbation for the purpose of sexual stimulation of the~~
6 ~~viewer.~~

7 ~~(4) Sadomasochistic abuse for the purpose of sexual stimulation~~
8 ~~of the viewer.~~

9 ~~(5) Exhibition of the genitals or the pubic or rectal area of any~~
10 ~~person for the purpose of sexual stimulation of the viewer.~~

11 ~~(6) Defecation or urination for the purpose of sexual stimulation~~
12 ~~of the viewer.~~

13 ~~(c) Subdivision (a) does not apply to the activities of law~~
14 ~~enforcement and prosecution agencies in the investigation and~~
15 ~~prosecution of criminal offenses or to legitimate medical, scientific,~~
16 ~~or educational activities, or to lawful conduct between spouses.~~

17 ~~(d) Every person who violates subdivision (a) shall be punished~~
18 ~~by a fine of not more than two thousand dollars (\$2,000) or by~~
19 ~~imprisonment in a county jail for not more than one year, or by~~
20 ~~both that fine and imprisonment. If the person has been previously~~
21 ~~convicted of a violation of subdivision (a) or any section of this~~
22 ~~chapter, he or she shall be punished by imprisonment in the state~~
23 ~~prison.~~

24 ~~(e) The provisions of this section do not apply to an employee~~
25 ~~of a commercial film developer who is acting within the scope of~~
26 ~~his or her employment and in accordance with the instructions of~~
27 ~~his or her employer, provided that the employee has no financial~~
28 ~~interest in the commercial developer by which he or she is~~
29 ~~employed.~~

30 ~~(f) Subdivision (a) does not apply to matter that is unsolicited~~
31 ~~and is received without knowledge or consent through a facility,~~
32 ~~system, or network over which the person or entity has no control.~~

33 ~~(g) The depiction of each individual person as described in this~~
34 ~~section shall constitute a distinct and separate offense.~~

35 ~~SEC. 5. Section 311.4 of the Penal Code is amended to read:~~

36 ~~311.4. (a) Every person who, with knowledge that a person is~~
37 ~~a minor, or who, while in possession of any facts on the basis of~~
38 ~~which he or she should reasonably know that the person is a minor,~~
39 ~~hires, employs, or uses the minor to do or assist in doing any of~~
40 ~~the acts described in Section 311.2, shall be punished by~~

1 imprisonment in the county jail for up to one year, or by a fine not
2 exceeding two thousand dollars (\$2,000), or by both that fine and
3 imprisonment, or by imprisonment in the state prison. If the person
4 has previously been convicted of any violation of this section, the
5 court may, in addition to the punishment authorized in Section
6 311.9, impose a fine not exceeding fifty thousand dollars (\$50,000).

7 ~~(b) Every person who, with knowledge that a person is a minor~~
8 ~~under the age of 18 years, or who, while in possession of any facts~~
9 ~~on the basis of which he or she should reasonably know that the~~
10 ~~person is a minor under the age of 18 years, knowingly promotes,~~
11 ~~employs, uses, persuades, induces, or coerces a minor under the~~
12 ~~age of 18 years, or any parent or guardian of a minor under the~~
13 ~~age of 18 years under his or her control who knowingly permits~~
14 ~~the minor to engage in or assist others to engage in either posing~~
15 ~~or modeling alone or with others for purposes of preparing any~~
16 ~~representation of information, data, or image, including, but not~~
17 ~~limited to, any film, filmstrip, photograph, negative, slide,~~
18 ~~photocopy, videotape, video laser disc, computer hardware,~~
19 ~~computer software, computer floppy disc, data storage media,~~
20 ~~CD-ROM, or computer-generated equipment or any other~~
21 ~~computer-generated image that contains or incorporates in any~~
22 ~~manner, any film, filmstrip, or a live performance involving sexual~~
23 ~~conduct by a minor under the age of 18 years alone or with other~~
24 ~~persons or animals, for commercial purposes, is guilty of a felony~~
25 ~~and shall be punished by imprisonment in the state prison for three,~~
26 ~~six, or eight years.~~

27 ~~(c) Every person who, with knowledge that a person is a minor~~
28 ~~under the age of 18 years, or who, while in possession of any facts~~
29 ~~on the basis of which he or she should reasonably know that the~~
30 ~~person is a minor under the age of 18 years, knowingly promotes,~~
31 ~~employs, uses, persuades, induces, or coerces a minor under the~~
32 ~~age of 18 years, or any parent or guardian of a minor under the~~
33 ~~age of 18 years under his or her control who knowingly permits~~
34 ~~the minor to engage in or assist others to engage in either posing~~
35 ~~or modeling alone or with others for purposes of preparing any~~
36 ~~representation of information, data, or image, including, but not~~
37 ~~limited to, any film, filmstrip, photograph, negative, slide,~~
38 ~~photocopy, videotape, video laser disc, computer hardware,~~
39 ~~computer software, computer floppy disc, data storage media,~~
40 ~~CD-ROM, or computer-generated equipment or any other~~

1 computer-generated image that contains or incorporates in any
2 manner, any film, filmstrip, or a live performance involving sexual
3 conduct by a minor under the age of 18 years alone or with other
4 persons or animals, is guilty of a felony. It is not necessary to prove
5 commercial purposes in order to establish a violation of this
6 subdivision.

7 (d) (1) As used in subdivisions (b) and (c), “sexual conduct”
8 means any of the following, whether actual or simulated: sexual
9 intercourse, oral copulation, anal intercourse, anal oral copulation,
10 masturbation, bestiality, sexual sadism, sexual masochism,
11 penetration of the vagina or rectum by any object in a lewd or
12 lascivious manner, exhibition of the genitals or pubic or rectal area
13 for the purpose of sexual stimulation of the viewer, any lewd or
14 lascivious sexual act as defined in Section 288, or excretory
15 functions performed in a lewd or lascivious manner, whether or
16 not any of the above conduct is performed alone or between
17 members of the same or opposite sex or between humans and
18 animals. An act is simulated when it gives the appearance of being
19 sexual conduct.

20 (2) As used in subdivisions (b) and (c), “matter” means any
21 film, filmstrip, photograph, negative, slide, photocopy, videotape,
22 video laser disc, computer hardware, computer software, computer
23 floppy disc, or any other computer-related equipment or
24 computer-generated image that contains or incorporates in any
25 manner, any film, filmstrip, photograph, negative, slide, photocopy,
26 videotape, or video laser disc.

27 (e) This section does not apply to a legally emancipated minor
28 or to lawful conduct between spouses if one or both are under the
29 age of 18 years.

30 (f) In every prosecution under this section involving a minor
31 under the age of 14 years at the time of the offense, the age of the
32 victim shall be pled and proven for the purpose of the enhanced
33 penalty provided in Section 647.6. Failure to plead and prove that
34 the victim was under the age of 14 years at the time of the offense
35 is not a bar to prosecution under this section if it is proven that the
36 victim was under the age of 18 years at the time of the offense.

37 (g) Violations of this section regarding each individual person
38 as specified above shall constitute a distinct and separate offense.

39 SEC. 6. Section 311.5 of the Penal Code is amended to read:

1 ~~311.5.— (a) Every person who writes, creates, or solicits the~~
2 ~~publication or distribution of advertising or other promotional~~
3 ~~material, or who in any manner promotes, the sale, distribution,~~
4 ~~or exhibition of matter represented or held out by him or her to be~~
5 ~~obscene, is guilty of a misdemeanor.~~

6 ~~(b) The depiction of each individual person in material or matter~~
7 ~~described in subdivision (a) shall constitute a distinct and separate~~
8 ~~offense.~~

9 ~~SEC. 7.— Section 311.7 of the Penal Code is amended to read:~~

10 ~~311.7.— (a) Every person who, knowingly, as a condition to a~~
11 ~~sale, allocation, consignment, or delivery for resale of any paper,~~
12 ~~magazine, book, periodical, publication or other merchandise,~~
13 ~~requires that the purchaser or consignee receive any obscene matter~~
14 ~~or who denies or threatens to deny a franchise, revokes or threatens~~
15 ~~to revoke, or imposes any penalty, financial or otherwise, by reason~~
16 ~~of the failure of any person to accept obscene matter, or by reason~~
17 ~~of the return of such obscene matter, is guilty of a misdemeanor.~~

18 ~~(b) The depiction of each individual person in obscene matter~~
19 ~~as provided in this section shall constitute a distinct and separate~~
20 ~~offense.~~

21 ~~SEC. 8.— Section 311.10 of the Penal Code is amended to read:~~

22 ~~311.10.— (a) Any person who advertises for sale or distribution~~
23 ~~any obscene matter knowing that it depicts a person under the age~~
24 ~~of 18 years personally engaging in or personally simulating sexual~~
25 ~~conduct, as defined in Section 311.4, is guilty of a felony and is~~
26 ~~punishable by imprisonment in the state prison for two, three, or~~
27 ~~four years, or in a county jail not exceeding one year, or by a fine~~
28 ~~not exceeding fifty thousand dollars (\$50,000), or by both such~~
29 ~~fine and imprisonment.~~

30 ~~(b) Subdivision (a) shall not apply to the activities of law~~
31 ~~enforcement and prosecution agencies in the investigation and~~
32 ~~prosecution of criminal offenses.~~

33 ~~(c) Advertisement as specified in subdivision (a) shall constitute~~
34 ~~a distinct and separate offense for each individual person under~~
35 ~~18 years of age depicted in the obscene matter.~~

36 ~~SEC. 9.— Section 311.11 of the Penal Code is amended to read:~~

37 ~~311.11.— (a) Every person who knowingly possesses or controls~~
38 ~~any matter, representation of information, data, or image, including,~~
39 ~~but not limited to, any film, filmstrip, photograph, negative, slide,~~
40 ~~photocopy, videotape, video laser disc, computer hardware,~~

1 computer software, computer floppy disc, data storage media,
2 CD-ROM, or computer-generated equipment or any other
3 computer-generated image that contains or incorporates in any
4 manner, any film or filmstrip, the production of which involves
5 the use of a person under the age of 18 years, knowing that the
6 matter depicts a person under the age of 18 years personally
7 engaging in or simulating sexual conduct, as defined in subdivision
8 (d) of Section 311.4, is guilty of a felony and shall be punished by
9 imprisonment in the state prison, or a county jail for up to one
10 year, or by a fine not exceeding two thousand five hundred dollars
11 (\$2,500), or by both that fine and imprisonment.

12 (b) Every person who commits a violation of subdivision (a),
13 and who has been previously convicted of a violation of this
14 section, an offense requiring registration under the Sex Offender
15 Registration Act, or an attempt to commit any of the
16 above-mentioned offenses, is guilty of a felony and shall be
17 punished by imprisonment in the state prison for two, four, or six
18 years.

19 (c) It is not necessary to prove that the matter is obscene in order
20 to establish a violation of this section.

21 (d) This section does not apply to drawings, figurines, statues,
22 or any film rated by the Motion Picture Association of America,
23 nor does it apply to live or recorded telephone messages when
24 transmitted, disseminated, or distributed as part of a commercial
25 transaction.

26 (e) The depiction of each individual person as described in this
27 section shall constitute a distinct and separate offense.

28 SEC. 10. It is the intent of the Legislature in enacting Sections
29 2 to 9, inclusive, of this act to abrogate the holdings in *People v.*
30 *Hertzig* (2007) 156 Cal.App.4th 398 and *People v. Manfredi* (2008)
31 169 Cal.App.4th 622.

32 SEC. 11.

33 SEC. 2. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

O